

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

DEEPAK RAHEJA,
GREGORY HAYSLETTE,
FRANK MAZZUCCO,
BHUPINDER SAWHNY,

Defendants.

CASE NO. 1:19-CR-559

JUDGE SARA LIOI

**JOINT MOTION OF THE
PARTIES FOR ENTRY OF AN
AMENDED PROTECTIVE
ORDER**

NOW COME the Parties in this matter (the United States, Gregory Hayslette, Frank Mazzucco, and Bhupinder Sawhny),¹ by and through their undersigned counsel, and collectively move this Court for the entry of an Amended Protective Order. The reason for this motion is that certain health care institutions have received subpoenas issued on behalf of Defendant Sawhny for the production of certain materials that contain protected Health Information, as defined in the Health Information Portability and Accountability Act (HIPAA). A copy of the subpoena issued to Express Scripts, Inc. is attached hereto at Exhibit 1 for reference. Each of the several subpoenas issued to various health care institutions contains the identical three document requests. Certain health care institutions (*e.g.*, CareSource, Express Scripts, Inc., and CaremarkPCS Health LLC) have objected to the current Protective Order entered by the Court as not

¹ An attempt to obtain Defendant Deepak Raheja's consent to join in this motion was sought last week. On Tuesday, May 26, 2020, counsel for Defendant Raheja filed a motion to withdraw as counsel. (Doc. #85.)

being HIPAA compliant, specifically with respect to 45 CFR § 164.512(e)(1)(v). Certain health care institutions have provided responsive documents under the current protective order. An Amended Protective Order that is HIPAA compliant is sought in order that the balance of subpoenaed materials may be obtained in advance of and in preparation for trial.

HIPAA permits health care institutions to disclose patient information in the course of judicial proceedings if certain conditions are satisfied. Specifically, HIPAA makes provision for the disclosure of patient information “[i]n response to a subpoena, discovery request, or other lawful process” if the party seeking the information has made reasonable efforts to secure a qualified protective order from the court. 45 CFR § 164.512(e)(1)(ii). A qualified protective order must prohibit the parties from using or disclosing the patient information for any purpose other than the litigation for which the information was requested. 45 CFR § 164.512(e)(1)(v)(A). The current protective order complies with that requirement. However, a HIPAA compliant protective order must also require that any information so disclosed be either returned to the health care institution or destroyed upon conclusion of the litigation. 45 CFR § 164.512(e)(1)(v)(B). The proposed Amended Protective Order complies with this requirement under HIPAA.

Accordingly, the parties jointly move for the approval and entry of an Amended Protective Order. A copy of the proposed Amended Protective Order is attached.

Respectfully submitted,

s/ Megan R. Miller (per consent)
Michael L. Collyer
Megan R. Miller
Assistant United States Attorneys
United States Court House
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
Telephone: 216.622.3744/3855
Michael.Collyer@usdoj.gov
Megan.R.Miller@usdoj.gov

s/ John F. McCaffrey
John F. McCaffrey (0039486)
TUCKER ELLIS LLP
950 Main Avenue, Suite 1100
Cleveland, OH 44113-7213
Telephone: 216.696.3486
john.mccaffrey@tuckerellis.com

*Attorney for Defendant Bhupinder
Sawhny, M.D.*

s/ Steven Grimes (per consent)
Steven Grimes
Frank Battaglia
WINSTON & STRAWN
35 West Wacker Drive
Chicago, IL 60601
Telephone: 312.558.5600
sgrimes@winston.com
fbattaglia@winston.com

*Attorneys for Defendant Frank
Mazzucco*

s/ Marisa T. Darden (per consent)
Colin R. Jennings
Thomas E. Zeno
Marisa T. Darden
SQUIRE PATTON BOGGS (US) LLP
4900 Key Tower
127 Public Square
Cleveland, OH 44114-1304
Telephone: 216.479.8500
colin.jennings@squirepb.com
thomas.zeno@squirepb.com
marisa.darden@squirepb.com

Attorney for Defendant Gregory Hayslette

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2020, a copy of the foregoing **Joint Motion for Leave to File Amended Protective Order** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ John F. McCaffrey

John F. McCaffrey (0039486)

TUCKER ELLIS LLP

950 Main Avenue, Suite 1100

Cleveland, OH 44113-7213

Telephone: 216.696.3486

Facsimile: 216.592.5009

john.mccaffrey@tuckerellis.com

*Attorney for Defendant Bhupinder
Sawhny, M.D.*